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NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			MA, JOHNNY	
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DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/902,707

Applicant(s)

NATHAN ET AL.

Examiner

Johnny Ma

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 6-10 have been considered but are moot in view of the new ground(s) of rejection.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 6-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,308,204 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

- a. Considering claim 6, claim 6 in the Instant Application corresponds to claim 1 in Patent #6,308,204 B1 ("Patent '204").

The claimed "providing a jukebox device including a microprocessor, a memory that stores songs that may be played on the jukebox device in response to requests by a user, a [touchscreen] display for displaying images, an audio arrangement providing

audio, a communication system for enabling the jukebox device to communicate with an song distribution network, and a multitasking operating system that enables simultaneous operation of the microprocessor, the display, the audio arrangement and the communication system” of the Instant Application equates to “a jukebox device including a microprocessor, a memory that stores audiovisual items that may be played on the jukebox device in response to requests by a user, a display for displaying video, an audio arrangement providing audio, a communication system for enabling the jukebox device to communicating with an audiovisual distribution network, and a multitasking operating system that enables simultaneous operation the microprocessor, the display, the audio arrangement and the communication system” in Patent ‘204.

The claimed “and further wherein said jukebox device includes operating software that controls operation of said jukebox” of the Instant Application equates to and is the same as “wherein said jukebox device includes operating software that controls the operation of said jukebox” in Patent ‘204.

The claimed “providing a server remote to said jukebox device that can be accessed by said jukebox device through said distribution network” of the Instant Application equates to and is the same as “a server remote to said jukebox device that can be accessed by said jukebox device through said distribution network” in Patent ‘204.

Claim 6 in the Instant Application recites “a touchscreen [display for displaying images,]” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “a touchscreen” for the benefit of providing a more intuitive user controlled interface and to reduce the number of system components by alleviating the

need for a separate input device. Furthermore, claim 6 in the Instant Application also recites “displaying on the display images of album covers that correspond to songs that are stored on the jukebox” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “displaying on the display images of album covers that correspond to songs that are stored on the jukebox device for the benefit of providing a more pleasing presentation of song entertainment using accompanying visual representations of the selected songs. Furthermore, claim 6 in the Instant Application also recites “collecting money through the jukebox device from patrons in exchange for playing selected songs on the jukebox device, wherein the patrons select desired songs by interacting with the jukebox device through the touchscreen display” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “collecting money through the jukebox device from patrons in exchange for playing selected songs on the jukebox device, wherein the patrons select desired songs by interacting with the jukebox device through the touchscreen display” for the benefit of generating revenue for providing the jukebox services. Furthermore, claim 6 in the Instant Application recites “downloading songs from the server system to the jukebox device and storing the downloaded songs on the jukebox device,” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “downloading songs from the server system to the jukebox device and storing the downloaded songs on the jukebox device” for the benefit of allowing remote updating of media available to users of the device. Furthermore, claim 6 in the Instant Application also recites “uploading royalty information from the jukebox device to the server system for use in

accounting for music rights associated with the selected,” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “uploading royalty information from the jukebox device to the server for use in accounting for music rights associated with the audiovisual items” for the benefit of allowing the provider to remotely access usage statistics so that the provider may determine royalty payment owed without requiring personnel visit each device and manually acquire the usage information.

Furthermore, claim 6 in the Instant Application recites “providing a management function that enables an authorized manager of the jukebox device to locally access and selectively modify operating settings for the jukebox device through use of the touchscreen display” which is not recited in Patent ‘024. It would have been obvious to modify Patent ‘024 to include “providing a management function that enables an authorized manager of the jukebox device to locally access and selectively modify operating settings for the jukebox device through use of the touchscreen display” for the benefit of allowing the jukebox provider to maintain the jukebox,

Patent Application ‘204 recites “wherein said server is operable to register said jukebox for operation through communication with the jukebox device” which is not recited in the instant claim. However, the Instant Application recites “registering said jukebox device for operation through communication between the jukebox device and the server.” It would have been obvious to broaden claim 1 to get claim 6 by not including “said server is operable to register.”

Patent Application '204 recites "and said server is operable to send data to said jukebox device which is interpreted by said jukebox as a request by said server to remotely update said operating software on said jukebox which is not recited in the instant claim. However, the Instant Application recites "sending update data from said server to said jukebox device which is used by said jukebox device to remotely update said operating software on said jukebox device." It would have been obvious to broaden claim 1 to get claim 6 by not including "which is interpreted by said jukebox as a request by said server."

Patent Application '204 recites "upon receipt by said jukebox of said data from said server indicating a request to remotely update said operating software, said jukebox device is operable to modify start-up operation of said jukebox device such that said jukebox device will operate in accordance with new operating software received from said server over said distribution network" which is not recited in the instant claim. However, the Instant Application recites "and upon receipt by said jukebox device of said update data, modifying said jukebox device such that said jukebox device will operate in accordance with new operating software received from said server over said distribution network." It would have been obvious to broaden claim 1 to get claim 6 by not including "from said server indicating a request to remotely update said operating software" and "start-up."

b. Considering claim 7, claim 7 in the Instant Application corresponds to claim 2 in Patent '204.

The claimed “further including, upon receipt of said update data, verifying by said jukebox device if a version number of current software is outdated” of the Instant Application equates to and is the same as “wherein upon receipt of said data, said jukebox is operable to verify if a version number of current software is outdated” in Patent ‘204.

The claimed “and, if said version number is outdated, performing a back up of the current operating software, modifying a system startup file for startup with the back up of the current software, beginning execution of a new version of said software received from said server system, verifying proper operation of said new version of said software” of the Instant Application equates to and is the same as “and further wherein, if said version number is outdated, said jukebox performs a back up of current operating software, modifies a system startup file for startup with the back up of the current software, begins execution of the new version of said software, verifies proper operation of said new version of said software” in Patent ‘204.

The claimed “and, if said new version properly operates, reinitializing the system startup file for startup with the new version” of the Instant Application equates to and is the same as “and, if said new version properly operates, reinitializes the system startup file for startup with the new version.

c. Considering claim 8, claim 8 in the Instant Application corresponds to claim 3 in Patent ‘204.

The claimed “further including, if said verification of said new version indicates an error, reinitializing said current version of said software, and sending an error message



to said server system” of the Instant Application equates to and is the same as “wherein if said verification of said new version indicates an error, said jukebox device is operable to reinitialize said current version of said software, and to send an error message to said server” in Patent ‘204.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US 5,355,302 of record) in further view of Ludwig (US 5,521,922), Hendricks et al. (US 6,408,437 B1 of record), and Vogel US 5,117,407).

As to claim 6, note the Martin et al. reference that discloses a system for managing a plurality of computer jukeboxes. The claimed “providing a jukebox device including a microprocessor, a memory that stores songs” is met by microprocessor 121A (Martin 5:27) and “songs and displays graphics...are stored locally in the large-volume data storage unit 93” (Martin 5:8-10). The claimed “that may be played on the jukebox device in response to requests by a user” is met by “once a specific song has been selected and queued-up, the processing circuit 121 first identifies the beginning address of the compressed digital data from the song address field 37 of the song record 29 in the queue. From this address, using the bus 124, the circuit 121 reads the compressed digital data out of the storage unit 93, decompressed that data, and sends the decompressed digital data to the audio reproduction circuit 127” (Martin 7:56-64).

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Note, the Martin et al. reference teaches a “display for displaying images” (Martin 5:8-25; 6:59-68) and selections keys for interacting with the display (Martin 5:42-59). However, the Martin et al. reference does not specifically teach a touchscreen display. Now note the Frank et al. reference that teaches a coin operated jukebox device using data communication network. The claimed “touchscreen display” is met by “the input keyboard may also be replaced by a touch screen system” (Frank 4:10-28). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin et al. display and selections keys with the Frank et al. touchscreen display for the purpose of providing a more intuitive interface for interacting with the jukebox system and to reduce the number of system components, by not requiring the inclusion of separate selection keys.

The claimed “an audio arrangement providing audio” is met by audio reproduction circuit 127 coupled to a speaker system 129 (Martin 5:56-59). The claimed “a communication system for enabling the jukebox device to communicate with a song distribution network” is met by modem 19 and audiovisual distribution network 15 as illustrated in Figure 1 (see Martin).

Further note, the Martin et al. reference teaches an “[...] operating system that enables [...] operation of the microprocessor, the display, the audio arrangement and the communication system” is met by “and further wherein said jukebox device includes operating software that control operation of said jukebox” wherein “[t]he jukebox 13 also includes a processing circuit 121 which contains a microprocessor 121A, read only memory (ROM) 121B and random access memory (RAM) 121C. As in conventional computer systems, the microprocessor 121A operates in accordance with the software program...processing circuit 121 controls the operation and flow of data into and out of the jukebox 13 through the modem 19 [communication system]...controls

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a visual display 125 [display]...further controls, via the bus 124, an audio reproduction circuit 127 coupled to a speaker system 129” (Martin 5:26-59). However, the Martin et al. reference does not specifically teach that the disclosed operating system is a multitasking operating system that enables simultaneous operation. Now note the Ludwig reference that teaches a multitasking operating system (Ludwig 4:55-58; 6:15-22; and 18:44-52). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin operating system with the Ludwig multitasking operating system in order to manage multiple tasks thereby maximizing the processing power of the microprocessor. The claimed “providing a server system remote from said jukebox device that can be accessed by said jukebox device through said distribution network” is met by “[t]he central management system 11 communicates with each computer jukebox 13 via transmission link 15” (Martin 3:26-28). The claimed “registering said jukebox device for operation through communication between the jukebox device and the server system” is met by “[t]he central management system 11 communicates with each computer jukebox 13 via a transmission link 15” (Martin 3:26-28) and “the central management system 11 monitors each jukebox 13 to determine the number of times each song has been played” (Martin 3:7-12) wherein it is inherent that the jukebox device be registered with the central management system [server] in order for the server to successfully communicate with each particular jukebox computer. The claimed “downloading songs from the server system to the jukebox device and storing the downloaded songs on the jukebox device” is met by the management system 11 downloads to the jukebox songs and graphics (Martin 6:19-58). The claimed “displaying on the display images of album covers that correspond to songs that are stored on the jukebox device” is met by the display of associated images with songs

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wherein the images are album covers (Martin 4:51-53; 5:8-25). The claimed “collecting money through the jukebox device from patrons in exchange for playing selected songs on the jukebox device” is met by “using the display 125, the circuit 121 prompts the user to deposit money into the coin/bill detector 126...if sufficient moneys have been deposited, the circuit 121 branches to block 171 wherein the circuit 121 updates the play count filed of the selected song’s record in the catalog file 95 and money intake data stored in the memory” and queues the song to be played (Martin 7:18-55). The claimed “wherein the patrons select desired songs by interacting with the jukebox device through the touchscreen display” is met by the Martin and Frank combination as discussed above wherein the user uses input device (touchscreen) to select desired songs (Martin 7:18-55). The claimed “uploading royalty information from the jukebox device to the server system for use in accounting for music rights associated with the selected songs” is met by “[p]articularly, the central management system 11 monitors each jukebox 13 to determine the number of times each song has been played. From these numbers, the central management system 11 can calculate the royalty payments that are due” (Martin 3:7-12). Note, the Martin et al. reference discloses jukebox software (Martin 5:26-33) and updating songs on the jukebox (Martin 6:8-58). However, the Martin et al. reference is silent as to upgrading the jukebox software. Now note the Hendricks et al. reference that discloses a reprogrammable terminal. The claimed “sending update data from said server system to said [...] device which is used by said [...] device to remotely update said operating software on said [...] device” is met by the transmitting of update data from the network controller [server] to the device for remote reprogramming (Hendricks 28:14-20). The claimed “and upon receipt by said [...] device of said update data, modifying said [...] device such that said [...] device will operate in accordance

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with new operating software received from said server system over said distribution network” is met by “[u]pon completion of loading of the new executable 1106 into FLASH ROM 1108, the microprocessor 602 will command that the set top terminal 220 be reset. Resetting the set top terminal 220...causing the new executable program version n+1 1106 to be run” (Hendricks 28:40-45). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin et al. jukebox software and central management system with the Hendricks remote updating of a device from a server for the purpose of providing a convenient way of upgrading functionality of the jukebox without requiring service personnel to visit each physical location and manually upgrade the software. The claimed “sending update data from said server to said jukebox device which is used by said jukebox device to remotely update said operating software on said jukebox device” and “and upon receipt by said jukebox device of said update data, modifying said jukebox device such that said jukebox device will operate in accordance with new operating software received from said server over said distribution network” are met by the Martin et al. and Hendricks et al. combination as discussed above. Also note the Martin et al. reference teaches route men physically visit the location of each computer jukebox 13 for updating the music catalog (Martin 8:8-30). However, the Martin et al. reference does not specifically teach providing a management function. Now note the Vogel reference that teaches a vending machine with synthesized description messages. The claimed “providing a management function that enables an authorized manager of the jukebox device to locally access and selectively modify operating settings for the jukebox device” is met by control means for providing management functions (Vogel 5:25-43). Therefore, the examiner submits that it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify the Martin et al. route men configuration of a computer jukebox and Frank et al. touch screen with the Vogel management function via control means in order to handle any non-real time operations and maintain the system.

As to claim 9, note the Martin et al. reference teaches the downloading of songs compressed by the server system but does not specifically disclose encoding songs with a code number resident in said jukebox device. Nevertheless, the examine takes Official Notice that it is notoriously well known to encrypt data using a code resident on the receiving device for decryption for the purpose of preventing unauthorized users from accessing the encrypted data. Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin server system encoding accordingly for the above stated advantages. The claimed further including encoding songs with a code number resident in said jukebox device before downloading song from the server system to the jukebox device” and “the songs being encoded by the server system” is met by the combination as discussed above.

As to claim 10, the claimed “further including providing a second management function that enables an authorized manager of the jukebox device to access and selectively modify operating settings for the jukebox device through use of a remote control” is met by management system that remotely accesses the jukebox device to modify operating system such as the local music library (Martin 5:60-6:58).

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6. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US 5,355,302 of record) in further view of Ludwig (US 5,521,922), Hendricks et al. (US 6,408,437 B1 of record), Vogel US 5,117,407), Bacon et al. (US 5,440,632 of record), Beaverton (US 5,210,854 of record), and Nilsson et al. (US 5,410,703 of record).

As to claim 7, the claimed “further including, upon receipt of said update data, verifying by said jukebox device if a version number of current software is outdated, and, if said version number is outdated.” Note the Martin et al. and Hendricks et al. combination teaches the updating of jukebox software as discussed in the rejection of claim 6. However, the Martin et al. and Hendricks et al. combination does not specifically teach a version comparison. Now note the Bacon et al. reference that discloses a reprogrammable subscriber terminal. The claimed “further including, upon receipt of said update data, verifying by said [...] device if a version number of current software is outdated, and, if said version number is outdated...” is met by “[i]f the code revisions match, that means that the code revision that the parameters transaction is attempting to download is already in the memory space of the control microprocessor 128. Therefore, the program exits. If, on the other hand, the code revisions do not match then the control processor 128 will...” (Bacon 15:27-68). Note the Martin et al., Hendricks et al., and Bacon et al. combination teaches comparing version information as discussed above and performing a function if the version number is outdated. Further note, the Hendricks et al. reference discloses an embodiment wherein the current program version remains in FLASH ROM while the new program version is installed (Hendricks 28:1-13) and “[i]f a single FLASH ROM does not have enough memory capacity to store both the current program version n 1110 and a new program version, the new program version 1106 can be loaded into a second FLASH

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ROM” (Hendricks 28:36-39). Also note, the Martin et al. reference discloses a ROM for the software and RAM for a scratch pad (Martin 5:26-32). However, the Martin et al., Hendricks et al., and Bacon et al. combination does not specifically teach “performing a back up of the current operating software.” Nevertheless, the examiner gives Official Notice that it is notoriously well known in the art to back up current software prior to the installation of a newer version of the software for the purpose of keeping the original working software available for roll-back in the event the new software fails to install or operate properly. Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin et al., Hendricks et al., and Bacon et al. combination accordingly for the above stated advantages. In view of Hendricks et al. recognition that the first FLASH ROM may not have sufficient space to store both versions and the Martin et al. teaching of using a ROM for software and RAM as a scratchpad, the combination as discussed above teaches backing up the current software onto RAM (scratchpad) and installing the new software in ROM (software memory) satisfying the claimed “performing a back up of the current operating software.”

Further note, Hendricks et al. discloses, generally, switching between the two versions of software (Hendricks 28:40-45). However, the combination as discussed does not specifically disclose a startup file. Now note the Beaverton et al. reference that discloses a system for updating program stored in EEPROM by storing new version into new location and maintaining a transfer vector to contain the starting address of the old version or new version (Beaverton 3:10-25). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin et al., Hendricks et al., and Bacon et al. combination with the Beaverton et al. startup file initially pointing at the current



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software and modifying the startup file to point to the new version of software upon completed loading for the purpose of providing a method for recovering from an installation error of the new version of software. The claimed “modifying a system startup file for startup with the back up of the current software” is met by the Martin et al., Hendricks et al., Bacon et al., and Beaverton et al. combination as discussed above wherein in order to point to the current program, it is inherent that the start up file be modified to point to the back up of the current software. Note, the Martin et al., Hendricks et al., Bacon et al., and Beaverton et al. combination discloses “and, if said new version properly [loads], reinitializing the system start up file for startup with the new version” (Beaverton 3:20-25). However, the Martin et al., Hendricks et al., Bacon et al., and Beaverton et al. combination fails to specifically teach the method being triggered by the execution of the new version of software. Now note the Nilsson et al. reference that discloses executing the software and if there is a problem rollback to the old version of software (Nilsson 11:15-68; 12:12-37). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Martin et al., Hendricks et al., Bacon et al., and Beaverton et al. combination teaching modifying a startup file if the new version is properly loaded with the Nilsson et al. execution error for the purpose of ensuring that the software executes properly prior to the transfer of control from the old version of software to the new version of software. The claimed “beginning execution of a new version of said software and, if said new version properly operates, reinitializing the system start up file for startup with the new version” is met by the Martin et al., Hendricks et al., Bacon et al., Beaverton et al., and Nilsson et al. combination as discussed above.

As to claim 8, the claimed “further including, if said verification of said new version indicates an error, reinitializing said current version of said software” is met by that discussed in the rejection of claim 7. The claimed “and sending an error message to said server system” is met by the transmission of a message to the server upon failure of the installation (Hendricks 27:65-67).

### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

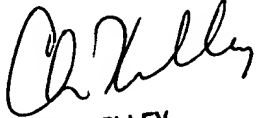
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny Ma whose telephone number is (571) 272-7351. The examiner can normally be reached on 8:00 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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